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September 22, 2020

BY ECF

The Honorable Laura Taylor Swain
United States District Court
Southern District of New York
500 Pearl Street
New York, New York 10007

MEMO ENDORSED

Re: *United States v. Fertides et al.*, No. 18 Cr. 319 (LTS)

Dear Judge Swain:

I write to respectfully request a sixty-day adjournment of Noel Martinez's sentencing hearing scheduled for October 13, 2020. I have conferred with counsel for the government, who has no objection to this request.

The reason for this request is to allow Mr. Martinez to litigate a motion to vacate his conviction filed in New York Supreme Court for the County of New York. On June 5, 2020, Mr. Martinez pleaded guilty to a single count charging a violation of 18 U.S.C. § 924(c)(1)(A)(ii). Before entering that plea but after the indictment in this case was unsealed, Mr. Martinez entered a plea of guilty to second-degree attempted robbery in Manhattan Supreme Court. That court imposed a sentence of five years' imprisonment. In advising Mr. Martinez about changing his plea in state court, his state lawyer falsely led Mr. Martinez to believe that he could serve his state sentence concurrently with any sentence that this Court would impose.

Based on that advice, Mr. Martinez entered a plea of guilty in state court and received a five-year sentence. The sentence that this Court imposes must run consecutive to that sentence. This result is against the stated intention of all the parties to the state-court plea: the state court, Mr. Martinez's state lawyer, Mr. Martinez and the District Attorney's Office. Mr. Martinez thus received ineffective assistance of counsel and his plea of guilty in state court was not knowing, voluntary and intelligent. He is, thus, entitled to relief pursuant to New York Criminal Procedure Law 440.10(h).

Mr. Martinez has made the motion, which he filed earlier today, and has requested an evidentiary hearing. An adjournment will permit Mr. Martinez to seek

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the aforementioned relief. As stated, the government has no objection to this request. Thank you for your considerate attention to this important matter.

Respectfully submitted,

/s/ Ezra Spilke

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Counsel for Noel Martinez

Cc: All counsel of record by ECF

The sentencing is adjourned to December 15, 2020, at 10:00 a.m. as a control date. Counsel shall file a status report by December 1, 2020. DE# 280 resolved.
SO ORDERED.

9/23/2020

/s/ Laura Taylor Swain, USDJ